

SERVICEMEMBERS CIVIL RELIEF ACT

INTRODUCTION:

The Servicemembers Civil Relief Act of was passed by Congress to provide protection to persons entering or called to active duty in the U.S. Armed Forces. Reservists and members of the National Guard are also protected under the SCRA (hereafter referred to as Act). The protection begins with the date of entering active duty service and generally terminates within 30 to 90 days and in certain cases for up to six months after release from active duty.

QUESTIONS AND ANSWERS:

1. Q. Can a servicemember get out of a lease or rental agreement?

A. Yes -- a lease covering property used for dwelling, professional, business, agricultural or similar purposes may be terminated by a servicemember. Two conditions must be met:

- a. The lease/rental agreement was signed before the servicemember entered active duty; and
- b. The leased premises have been occupied for the above purposes by the servicemember or his or her dependents.

B. Also, the Act was amended to extend coverage to leases entered into by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of 90 days or more. The condition that the leased premises be occupied for the above purposes by the servicemember or his or her dependents still applies.

2. Q. How does the servicemember go about terminating the lease?

A. To terminate the lease, the servicemember must deliver written notice to the landlord after entry on active duty or receipt of orders for active duty. Oral notice is not sufficient. The effective date of termination is determined as follows:

- a. For month-to-month rentals, termination becomes effective 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example: if rent is due on the first of the month and notice is mailed on 1 August, then the next rent payment is due on 1 September. Thirty days after that date would be 1 October, the effective date of termination.

- b. For all other leases, termination becomes effective on the last day of the month after the month in which proper notice is delivered. For example: if the lease calls for a yearly rental and notice of termination is given on 20 July, the effective date of termination would be 31 August.

3. Q. Can I get a refund of security deposit or prepaid rent?

- A. If rent has been paid in advance, the landlord must refund the unearned portion. If a security deposit was required, it must be refunded to the servicemember upon termination of the lease. The servicemember is required to pay rent only for those months before the lease is terminated.

4. Q. Can I stop an eviction action by my landlord?

- A. If the property is rented for \$2,465 per month or less in 2004, you may ask the court to delay the eviction action for up to three months. (The Act provides a formula to calculate the rent ceiling for future years.) The court must grant the stay if you request it and can prove that your ability to pay was materially affected by your military service.

5. Q. Does the Act apply to time payments or installment contracts?

- A. Servicemembers who signed an installment contract for the purchase of real or personal property before active duty will be protected if their ability to make the payments is "materially affected" because of active duty service. Remember--
- a. The servicemember must have paid, before entry into active duty, a deposit or installment payment under the contract.
 - b. If the servicemember is not able to make payments because of his or her military duty, the Act applies.
 - c. The vendor (seller) is thereafter prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.
 - d. The court may determine whether a servicemember's financial condition is "materially affected" by comparing the servicemember's financial condition before entry on active duty with his financial condition while on active.

. Q. What about my credit cards--can I stop paying on them?

- A. No--you are still responsible for your debts after entry on active duty. Your obligation to pay your debts is unchanged by military service.

7. Q. What about the interest rates on my debts and mortgage payments--do they go down when I enter military service?

- A. Yes--when an obligation was incurred before entry on active duty, the interest rate goes down to 6%, unless the creditor (bank, finance company, credit card issuer, etc.) can prove in court that the member's ability to pay was not materially affected by military service. The terms "interest" includes service charges. For more info, please see our legal assistance website at: http://www.monterey.army.mil/staff/SJA/legal/consumer_issues/sixpercentcap.pdf

8. Q. Are there protections against mortgage foreclosures?

A. The Act protects servicemembers against foreclosures of mortgages, deeds of trust, and similar security devices, provided the following conditions are met:

- a. The relief is sought on an obligation secured by a mortgage, deed of trust, or similar security on either real or personal property;
- b. The obligation originated prior to entry upon active duty;
- c. The property was owned by the servicemember or dependent before entry on active duty status;
- d. The property is still owned by the servicemember or dependent at the time relief is sought;
- e. The ability to meet the financial obligation is "materially affected" by the servicemember's active duty obligation.

9. Q. Can judicial proceedings be delayed?

A. A servicemember who is involved in civil (not criminal) or administrative proceeding may make at any time before final judgment, an application to the court or administrative body for a stay of the proceeding. Such application must include: a letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the member's ability to appear and stating a date when the member will be available to appear; and, a letter or other communication from the member's commanding officer stating that the member's current military duty prevents appearance and that military leave is not authorized for the member at the time of the letter. Court must grant a stay of at least 90 days provided these conditions are met. See 50 USC Appendix section 202a of the Act for more information.

10. Q. If a servicemember is sued, can a default judgment be entered against him in his absence?

- A. For any civil action or proceeding in which the defendant does not appear, the plaintiff must file an affidavit stating whether or not they have evidence that the defendant is on active duty. A person who knowingly makes a false affidavit or other verification document shall be fined up to \$100,000 or imprisoned for up to one year. If it appears that the defendant is on active duty, the court or administrative body **may not** enter judgment against the defendant until it has appointed an attorney to represent the member. Where the defendant is on active duty, the court shall grant a stay of proceedings for a minimum period of 90 days upon application of counsel or on its own if the court determines that: 1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or 2) after due diligence counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

11. Q. What if I cannot pay my income taxes because of a call to active duty?

- A. The servicemember's ability to pay the tax must be "materially affected" (impaired) by reason of the active duty service. If this is the case, the Act defers (for up to six months after termination of military service) collection of any state or federal income tax on military or nonmilitary income if the payment is due either before or during military service. No interest or penalty may be charged for the nonpayment of any tax on which collection was deferred.

12. Q. What if I cannot pay my life insurance premiums?

- A. If you can no longer pay your premiums on commercial life insurance purchase prior to entry into the service, the government may guarantee the payment of the premiums, or require that the insurance carrier treat the unpaid premium as a loan against the policy. Upon separation, you would have up to two years to pay the premiums.

Legal Assistance
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